IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 2796 of 2003.
Date of Decision : March 16, 2010.

Smt. Misri Devi .

..... Petitioner .

Versus.

Union of India through the Secretary, Ministry of Home, North Block, New Delhi, and others.

..... Respondents.

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.

Present:- Mr. Sudhir Mittal, Advocate,
for the petitioner.

Mr. Jagjit Singh, Advocate, for,
Mr. C.M. Sharma, Central Government Counsel,
for respondents.

AUGUSTINE GEORGE MASIH, J. (ORAL).

The prayer in the present writ petition, which has been filed by the mother of Constable Jagdish Kumar for grant of family pension to the petitioner on declaration of son of the petitioner, namely, Jagdish Kumar civil dead, who was working as a Constable in the Central Reserve Police Force (hereinafter referred to as "the CRPF"), vide decree dated 10.08.1996 and release of the arrears on that account.

Counsel for the petitioner submits that son of the petitioner Constable Jagdish Kumar was enrolled in the CRPF in the year 1980 at the Group Centre, New Delhi. His service number was 801260433. He completed his training and came back to Group Centre, Bhuvneshwar. Sometime in the month of May, 1982, Constable Jagdish Kumar son of the petitioner came on 60 days earned leave to his native village with effect from 24.05.1982 to 22.07.1982 and was to report on duty on 24.07.1982 (F.N.) at Group Centre, Bhuvneshwar. After completion of the leave, Constable Jagdish Kumar on 21.07.1982 left home to report at Bhuvneshwar. He did not report for duty at Group Centre, Bhuvneshwar, and thereafter, acting on

the correspondence made with the petitioner by respondents, an F.I.R. was lodged at Police Station Dadri on 17.09.1982 and a missing report was got published in the local newspaper by father of Contable Jagdish Kumar. After due investigation, when no information could be collected by the police non traceability certificate was issued by the Investigating Agency. On the basis of the said certificate, Constable Jagdish Kumar was declared missing with effect from 24.07.1982, i.e., from the date of his absence from duty at the Group Centre, Bhuvneshwar.

At the time of his disappearance/when he went missing, Constable Jagdish Kumar was un-married. On the basis of untraced report of the police, the petitioner submitted claim for family pension and also other terminal benefits. This representation was submitted by father of Constable Jagdish Kumar, namely, Shri Sher Singh, who himself was working as a Constable in the CRPF, wherein he gave his consent that all benefits be given to the petitioner. The claim of the petitioner was not granted for the reason that there was no declaration about the death of son of the petitioner Constable Jagdish Kumar.

The petitioner filed a suit in the Civil Court for a decree of declaration. The said suit was allowed by the Addl. Civil Judge (Senior Division), Charkhi Dadri, on 10.08.1996, granting declaration that in view of the fact that whereabouts of Constable Jagdish Kumar was not known since the year, 1982, the death of Constable Jagdish Kumar can be presumed as he was not heard of for the last seven years. Consequently, it was held that in the light of the civil death of Constable Jagdish Kumar son of the petitioner, the petitioner being mother, is entitled to succeed to the movable and immovable property including pensionary benefits of Constable Jagdish Kumar from the CRPF, where he was employed.

On the declaration issued by the Civil Court, the petitioner further made a representation for grant of pension and other benefits. No decision was taken on the representation submitted by the petitioner.

A writ petition being CWP No. 2796 of 2002 was preferred by the petitioner (present petition) stating therein that the representation submitted by the petitioner is not being decided by respondents. A direction was issued by this Court, vide Order dated 14.02.2002 to respondents No. 2 and 3 to consider and decide the claim of the petitioner. Accordingly, the order dated 01.07.2002 (Annexure-P-22), passed by the Director General of CRPF/respondent No. 2, rejecting the claim of the petitioner on the ground that the parents were not dependent upon Constable Jagdish Kumar at the time when he went missing and that they did not fulfil the condition of the parents having monthly income of not more than Rs. 2,550/- as per rules. It was further stated that Shri Sher Singh father of Constable Jagdish Kumar was serving in the Department at that time and had superannuated only with effect from 30.06.1989, which is a date after Constable Jagdish Kumar went missing, i.e., 22.07.1982. On these grounds, the claim of the petitioner was rejected by respondents.

The writ petition was amended for challenging the Order dated 01.07.2002 (Annexure-P-22), which amendment was allowed, written statement was filed by respondents, contesting the claim herein.

Counsel for the petitioner on the basis of the above factual submissions submits that the date for determining the dependence of the parents of an employee as in the case of Constable Jagdish Kumar is the date when he is declared civil dead. Before the date of declaration by the Civil Court about the death of Constable Jagdish Kumar, the objection raised by the Department was that he is not yet dead and, therefore, no claim can be

granted. The suit for declaration was preferred by the petitioner, which was decreed on 10.08.1996. In the light of declaration, the date of death of Constable Jagdish Kumar would be for all intents and purposes legally treated as 10.08.1996. The father of Constable Jagdish Kumar, namely, Shri Sher Singh, husband of the petitioner superannuated from the CRPF as a Constable on 30.06.1989. He was drawing pension much less than Rs, 2,550/- per month, which would be the income, which the parents should not be earning beyond. In support of this contention, an affidavit dated 12.03.2010 of Shri Sher Singh, husband of the petitioner, has been filed in the Court, wherein he has stated that he was drawing pension @ Rs. 2,368/- per month till 30.10.2006 and thereafter, the pension received by him was Rs. 2,568/- per month. He has further stated in the affidavit that he and his wife have no other source of income apart from the pension drawn by him. On the basis of these submissions, counsel for the petitioner states that the petitioner fulfils the criteria as stipulated under Rule 54 (Regulation 21) of the Central Civil Service (Pension) Rules, on which reliance has been placed by respondents in its written reply. The income criteria has been specified in Sub Regulation 2 of Regulation 20, which states that the parents will get family pension at 30% of basic pay of the deceased employee, subject to minimum of Rs. 1,275/- per month provided they produce a certificate to the effect that their earning is not more than Rs. 2,550/- per month. He on this basis submits that the petitioner is entitled to family pension with effect from 01.01.1996 till 31.10.2006, when her income as also of her husband taken together was less than Rs. 2,550/- per month. On this basis, he prays that the present writ petition be allowed and directions be issued to respondents for grant of family pension as prayed for in the present writ petition.

On the other hand, counsel for respondents has submitted that the claim of the petitioner for grant of family pension was not accepted because of the reason that at the time when son of the petitioner went missing, her husband was in service of the CRPF and, therefore, she was not entitled to the family pension. His further submission is that there is no proof that the income of the parents at the time of declaration of son of the petitioner Constable Jagdish Kumar as civil dead was less than Rs, 2,550/- per month. He, however, is unable to rebut the contention as has been made by counsel for the petitioner that in the light of the fact that son of the petitioner Constable Jagdish Kumar has been declared civil dead only, vide judgment/decree dated 10.08.1996 and at that stage, the income of the parents was below Rs. 2,550/- per month and at that stage they both were wholly dependent on their son.

I have heard counsel for the parties and have gone through the records of the case.

The facts are not in dispute and, therefore, need not detain us any further. The earlier claim of the petitioner for grant of family pension was not considered for the reason that there was no declaration about the death of son of the petitioner Constable Jagdish Kumar. This declaration was made by the Civil Court on 10.08.1996, when decree to that effect was passed. Thus for all intents and purposes Constable Jagdish Kumar son of the petitioner is dead with effect from 10.08.1996. The dependence on Constable Jagdish Kumar has thus to be seen on 10.08.1996. The husband of the petitioner, namely, Shri Sher Singh had superannuated from the CRPF as a Constable on 30.06.1989. The pension which he was drawing was only Rs. 2,368/- per month till 30.10.2006 and thereafter, he was drawing pension of Rs. 2,568/- per month, which obviously is more than Rs. 2,550/-, which is more than the

income criteria fixed for claiming benefit of family pension. It is not in dispute that the petitioner has no source of income and when her income is clubbed with that of her husband Shri Sher Singh, who also has no other source of income except the pension, which he draws from the CRPF, it comes to Rs. 2,368/- per month uptil 31.10.2006. It is an admitted position that family pension to the parents is admissible with effect from 01.01.1998 and when there is no living widow or children left behind by deceased employee, mother gets preference over the father. It is also not in dispute that the income criteria stood fulfilled as far as parents of deceased Constable Jagdish Kumar are concerned at least uptil 31.10.2006. That being so, the petitioner would be eligible for consideration of her claim for grant of family pension from 01.01.1998 to 31.10.2006.

In view of the above, order dated 01.07.2002 (Annexure-P-22), passed by respondent No. 2 cannot be sustained and is hereby set aside. The writ petition is allowed and a direction is issued to the respondents to consider the claim of the petitioner for grant of family pension with effect from 01.01.1998 to 30.10.2006. The process of consideration and grant of pension shall be completed by respondents within a period of three months from the date of receipt of certified copy of this order.

(AUGUSTINE GEORGE MASIH)
JUDGE

March 16, 2010.
sjks.